UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GORAYEB & ASSOCIATES, P.C.,

Plaintiff,

- against -

GOOGLE, INC., MCNEIL CONSULTANTS LLC, QUINTESSA MARKETING, LLC, ACCIDENT INJURY LAW CENTER, and LAUREN MCNEIL,

Defendants.

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Civil Case No.: 17-3805

COMPLAINT

PLAINTIFF DEMANDS TRIAL BY JURY

Plaintiff, the law firm of Gorayeb & Associates, P.C. ("Gorayeb" or the "Firm"), as and for its Complaint against Defendants Google, Inc. ("Google"); McNeil Consultants LLC and Quintessa Marketing, LLC, which, upon information and belief, is the trade name for McNeil Consultants LLC (McNeil Consultants LLC and Quintessa Marketing, LLC are collectively referred to as "Quintessa"); Accident Injury Law Center ("Law Center"); and Lauren McNeil ("McNeil"), the owner, and, upon information and belief, the sole operator and individual in control of Quintessa and Law Center, alleges as follows:

NATURE OF THE ACTION

1. Without authorization from Gorayeb, Defendants have used, and permitted the use of, Gorayeb's registered and unregistered trademarks and name in false and misleading advertising on Google to mislead potential clients and other consumers and to free ride on Gorayeb's reputation and goodwill, which Gorayeb has created through over thirty years of hard work, professionalism, and expense.

In this action, Gorayeb seeks injunctive and monetary relief to redress these wrongs and to protect its potential clients and consumers.

2. This lawsuit is required because, in an effort to mislead and confuse consumers, Defendants, among other things, have engaged in the unauthorized sale/purchase of "Click to Call" Google advertising in which Google permitted Law Center to use Gorayeb's trademarks and to falsely state and/or imply in the text of such advertisements that Law Center was Gorayeb and/or was affiliated with Gorayeb. Defendants' actions have harmed Gorayeb and its professional reputation and have likely caused confusion to and misled Gorayeb's potential clients and intentionally diverted potential clients to third parties such as Quintessa, Law Center and/or McNeil.

3. Gorayeb, including its predecessors, has been a law firm continually in existence since 1986. Since its inception, the Firm has obtained over $1 billion in recoveries for its clients, who are the victims of personal injuries mostly in the construction industry, and has developed a reputation for excellence and outstanding service.

4. The Firm's clients are generally unsophisticated legal consumers, and many are immigrants to the United States.

5. The Firm has an extensive marketing budget for print, television, and radio, and expends substantial resources in maintaining a presence on the Internet. The Firm also sponsors numerous public international, national, and local events, including, but not limited to, The World Cup.

6. The Firm has continuously and exclusively used the name "Gorayeb &

Associates, P.C." since at least January 1, 1999. Since 2015, the Firm has a federally registered trademark, "Gorayeb & Associates, P.C. Justice For Accident Victims."

7. Defendant Google, which operates one of the world's most used Internet search engines and largest advertising networks, without Gorayeb's knowledge or permission, sold advertising to Quintessa, Law Center, and/or McNeil, called "Click to Call" advertisements, and permitted the advertisement text to include the Gorayeb trademarks, derivatives thereof, and name. Thus, Google actively participated in and assisted at least Quintessa, Law Center, and/or McNeil in using the Gorayeb trademarks and name in the text of the "Click to Call" Google advertisements without Gorayeb's authorization or knowledge.

8. Without Gorayeb's knowledge or authorization, Law Center's "Click to Call" Google advertisement not only displayed Gorayeb's trademarks, derivatives thereof, and name in the text of the advertisement, but falsely stated and/or implied that Law Center was in fact Gorayeb, stating: "Can Gorayeb And Associates Help You? Let Us Fight on Your Behalf!"

9. The use of the Gorayeb trademarks and name in Law Center's "Click to Call" Google advertisements was false and misleading and was intended to be so.

10. The "Click to Call" advertisement also permits those searching the Internet to be immediately connected, via telephone, with a person working for the website they click upon.

11. Law Center's "Click to Call" Google advertisement containing the Gorayeb trademarks, derivatives thereof and name directed the Internet user to two

telephone numbers with the same New York City area code, "646." Despite that the area code is for New York City, where Gorayeb is located, the telephone numbers, when dialed, were answered, upon information and belief, by McNeil, who is located in Oklahoma. The caller was, upon information and belief, told that they had reached a law firm, which was not identified by name.

12. Upon information and belief, McNeil is not an attorney. McNeil was also fully knowledgeable that Law Center is not Gorayeb or affiliated with Gorayeb; that Law Center is not located in New York; and that Law Center is not a law firm.

13. Moreover, the website listed on the "Click to Call" Google advertisement was www.accidentinjurylawcenter.com, which generically-named website describes a national network of unidentified lawyers to which a potential client's matter would be referred. Accordingly, a potential client viewing the Law Center website, upon searching for the name "Gorayeb," would likely be misled into believing that Gorayeb was affiliated with Law Center, which it was not, and/or was part of this network (which, as set forth below, is likely violative of New York law), further damaging Gorayeb's reputation and standing in the legal profession.

14. Upon information and belief, since at least 2009, Google has had a "tool" which enables it to monitor advertisements purchased from Google to determine whether trademarks are being used in those advertisements. Accordingly, concerning the "Click to Call" advertisement sold by Google and used by Quintessa, Law Center, and/or McNeil in March 2017, Google, upon information and belief, had the ability to know that the advertisement was using the Gorayeb trademarks; that the

trademarks, derivatives thereof, and name were being used without authorization; and that they were being used in a false and misleading manner. Google nonetheless permitted the Law Center "Click to Call" Google advertisements to run and profited from the advertisement as, upon information and belief, Google received payment for the advertisement from Quintessa, Law Center, and/or McNeil, all of whom knew that they had no authorization to use the Gorayeb trademarks, derivatives thereof, and name.

15. Upon information and belief, since 2009, Google has permitted advertisers to use trademarks belonging to others without the trademark owner's permission in limited circumstances. Google's limited circumstances are not "law," but, nevertheless, were not met under the facts here.

16. Law Center's "Click to Call" Google advertisement, which advertised legal services, could not fall within Google's exceptions, something Google knew or should have known. Thus, if Google had followed its own policies, it should have prevented Law Center's purchase, use, and misleading use of the Gorayeb trademarks, derivatives thereof, and name in the "Click to Call" Google advertisements.

17. By willfully ignoring its own policies and Gorayeb's valuable trademarks, derivatives thereof, and name, Google has damaged Gorayeb's valuable trademarks, name, and reputation and likely caused confusion to potential clients and consumers.

18. The substantial damages to Gorayeb and the lack of adequate remedy has required Gorayeb to bring this lawsuit for the following reasons:

a. First, each of Gorayeb's cases is highly valuable. Accordingly, the loss of a single case as a result of the unauthorized and misleading actions of the Defendants could result in substantial loss to Gorayeb.

b. Second, Gorayeb believes it has an obligation to protect its clients and potential clients from being unwittingly tricked into hiring other counsel by the unauthorized and misleading advertisements, which are the subject of this action.

c. Third, Gorayeb also believes that it has an obligation to protect its clients and potential clients from being misled by out-of-state legal advertising/referral companies, such as Quintessa and Law Center, who are improperly and possibly illegally soliciting clients in New York.

d. Fourth, the commercial remedy available to Gorayeb, when faced with the instant false advertising, deceptive trade practices, and trademark infringement, is to purchase from Google its own name and trademarks (or to outbid other advertisers for the use of its trademarks) so that it may run competitive truthful and authorized advertisements. By doing so, Gorayeb could have its authorized search results placed higher in the resultant Google search results so that potential clients would not likely see, view, or select unauthorized advertisements which would then be lower in the search results. This commercial remedy, is, of course, inadequate because it would further profit and therefore incentivize Google to permit competitors, including legal advertising/referral companies from out of state to improperly purchase and use Gorayeb's (and others') trademarks.

As a result, the entire buying cycle "food chain" (of competitors and their trademark owners) will continue endlessly with the result being no diminution to the unauthorized use of trademarks such as Gorayeb but an increased profit to Google which, because of its size, controls much of the Internet advertising market.

19. As a result of Defendants' wrongful conduct, Gorayeb has been irreparably harmed and, as set forth in more detail herein, is entitled to injunctive relief and damages.

PARTIES

20. Plaintiff Gorayeb is a law firm organized as a New York Professional Corporation with offices in Manhattan.

21. Upon information and belief, Defendant Google is a corporation organized pursuant to the laws of the State of Delaware with a principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043 and with offices in this District.

22. Upon information and belief, Defendant McNeil Consultants LLC is a Limited Liability Company organized in the State of Oklahoma with its principal place of business at 2576 Forest Glen Drive, Choctow, Oklahoma 73020. Upon information and belief, McNeil solely owns, operates, and controls McNeil Consultants LLC.

23. Upon information and belief, Defendant Quintessa Marketing, LLC is a Limited Liability Company organized in the State of Oklahoma with its principal place of business at 2576 Forest Glen Drive, Choctow, Oklahoma 73020. Upon

information and belief, Quintessa Marketing, LLC is the trade name for McNeil Consultants LLC. Upon information and belief, McNeil solely owns, operates, and controls Quintessa Marketing, LLC.

24. Upon information and belief, Law Center is an unincorporated entity that McNeil solely owns, operates, and controls. Pursuant to its online privacy statement, Law Center has a principal place of business at 7119 W. Sunset Blvd., Los Angeles, California 90046.

25. Upon information and belief, McNeil is a natural person who solely owns, controls, and operates Quintessa and Law Center and who resides at 2576 Forest Glen Drive, Choctow, Oklahoma 73020.

JURISDICTION AND VENUE

26. This Court has original and federal subject matter jurisdiction over the claims in this lawsuit pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331, 1338(a) and 1338(b). In addition, the Court has jurisdiction over the New York state law claims pursuant to 28 U.S.C. §1367(a) because those claims are so related to claims in this action within the Court's original jurisdiction that they form part of the same case or controversy.

27. The Court has personal jurisdiction over the Defendants pursuant to New York CPLR §302(a)(1), (2), and (3).

28. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and (c) because Defendants transact business, are subject to personal jurisdiction, and therefore reside or may be found in this judicial district.

BACKGROUND FACTS

Gorayeb's Valuable Trademarks, Name, and Goodwill

29. Since the time of its founding in 1986, the law firm of Gorayeb has been in continuous operation and has obtained over $1 billion in recoveries for its clients.

30. Gorayeb has always been located in Manhattan and represents clients who have suffered from personal injuries in Courts in New York State. Many of Gorayeb's clients have been severely injured in construction accidents.

31. Most of Gorayeb's clients are unsophisticated legal consumers, and many of them are immigrants to the United States.

32. Gorayeb expends substantial resources each year to provide potential clients with a choice of counsel and to promote its services. It has invested substantial sums to build its reputation and goodwill in Internet and other advertising.

33. For example, the Firm's website, www.gorayeb.com, which is available in both English and Spanish, has received an average of over 25,000 visitors a month since December 2016. The Firm also has a YouTube channel, "Gorayeb TV," and Facebook page.

34. Gorayeb also expends substantial revenues each year in traditional media to promote the Firm and to provide clients with information about its services.

35. Gorayeb sponsors numerous public international, national, and local events, including, but not limited to, The World Cup, which promote the Firm, its trademarks, name, and goodwill.

36. Through its efforts, Gorayeb has obtained a widespread favorable professional reputation and its trademarks, name, and goodwill have substantial value.

37. To preserve and enhance its trademark rights, the Firm, in 2015, obtained a federal trademark registration, "Gorayeb & Associates, P.C. Justice For Accident Victims." Attached as Exhibit A is a copy of the Firm's registered trademark.

38. Gorayeb has never authorized Google to sell or license its trademarks, derivatives thereof, or name, or to permit any third-party to use its trademarks, derivatives thereof, or name.

Google's "Click to Call" Advertising Program

39. Upon information and belief, Google is one of the largest search engine providers on the Internet, and is also one of the world's most prominent advertising networks.

40. Upon information and belief, through the Google AdWords Program, Google sells, among other things, trademarks and names as keywords which trigger advertising linked to websites owned by persons and entities that do not necessarily own the trademarks or to whom the names do not necessarily belong.

41. Upon information and belief, prior to 2004, Google's policy precluded the use by Google advertisers of other's trademarks in the text of advertisements purchased from Google. Upon information and belief, Google's internal studies suggested that the unrestricted use of trademarks in the text of an advertisement might confuse Internet users.

42. Upon information and belief, in 2009 Google changed its policy and permitted the limited use of trademarks in advertising text in four narrow circumstances, limited to when: (1) the sponsor is a reseller of a genuine trademarked product; (2) the sponsor makes or sells component parts for a trademarked product; (3) the

sponsor offers compatible parts or goods for use with the trademarked product; or (4) the sponsor provides information about or reviews a trademarked product.

43. Google's limited exceptions do not apply to the facts herein and could not apply to the trademarks, derivatives thereof, and/or name of a law firm such as Gorayeb.

44. Upon information and belief, Google's policy change came after Google developed technology to automatically check linked websites to determine if the advertiser's use of a trademark in the advertisement text was legitimate. Accordingly, upon information and belief, since 2009 Google has been able to check advertisements it sells to determine if a trademark is not used legitimately.

45. Moreover, upon information and belief, in its public securities filings, Google admitted that the policy change could increase the likelihood of trademark infringement lawsuits, which, depending on their outcome, could result in a change in the policy.

46. Upon information and belief, Google implemented an advertising program that permits Internet users, using a mobile device, to request an immediate telephone connection to an advertiser on whose advertisement they clicked. This technology is referred to as "Click to Call."

47. Gorayeb neither directly nor indirectly has given Google any permission, authority, or license to use, allow the use of, or sell the right to the Gorayeb trademarks, derivatives thereof, or name in the text of any Google advertisement, including, but not limited to, its "Click to Call" advertising program.

48. Without the knowledge or authorization of Gorayeb, upon information and belief Google, as part of, among other advertisements, its "Click to Call" advertising

campaign, sold advertising and permitted Quintessa, Law Center, and/or McNeil to use Gorayeb's trademarks, derivatives thereof, and/or name in the text of the "Click to Call" advertisements they purchased from Google.

49. Without Gorayeb's knowledge or authorization, upon information and belief Quintessa, Law Center, and/or McNeil purchased and used Gorayeb's trademarks, derivatives thereof, and/or name, at a minimum, in the text of "Click to Call" advertisements they purchased from Google.

50. In or about March 2017 (but when the unauthorized use began or for how long it lasted is unknown), an Internet search for "Gorayeb and Associates" on a mobile device resulted in a user being brought to a link for a "Click to Call" Google advertisement for Law Center.

51. The text of the advertisement stated: "Can Gorayeb And Associates Help You? Let Us Fight on Your Behalf!"

52. The text of the advertisement contained a New York City telephone number with a "646" area code. The telephone number was not for Gorayeb, but, instead, upon information and belief, for Quintessa, Law Center and/or McNeil.

53. Clicking on the dial pad, which was brought up on the user's mobile telephone by the search, initiated a call to a second telephone number with a "646" area code. The second telephone number was not for Gorayeb, but, instead, for Quintessa, Law Center and/or McNeil. Attached as Exhibit B are "screenshots" of the above Internet session.

54. Potential clients viewing the "Click to Call" Google advertisement for Law Center would likely be confused and deceived into believing that, when they

clicked to call, they were contacting Gorayeb because, *inter alia,* the advertisement included the false promotional statement "Can Gorayeb Help You? Let Us Fight on Your Behalf!" as well as telephone numbers with a New York City Area Code, "646."

55. In addition, the person answering the telephone in response to the telephone call initiated as a result of the search, who, upon information and belief, was McNeil, stated that the caller was reaching a law firm but did not indicate what law firm. This statement is false as the caller would be reaching Law Center, which, on the www.accidentinjurylawcenter.com website, states: "This is not a law firm or a referral service and does not provide legal advice." This statement is also misleading as, based on McNeil's statement, the caller could assume that they were reaching the law firm of Gorayeb when the caller was not.

56. Furthermore, the website listed on the "Click to Call" advertisement was for www.accidentinjurylawcenter.com, which generically-named website describes a national network of unidentified lawyers to which a potential client's matter would be referred.

57. Gorayeb is not and never was Law Center, affiliated with Law Center, or a member of such a network.

58. Moreover, upon information and belief, Quintessa, Law Center, and McNeil are not law firms or lawyers. Pursuant to New York law, including, but not limited to, the New York Judiciary Law, Quintessa, Law Center, and McNeil are not legally permitted to solicit clients in New York, to work on or behalf of New York attorneys to solicit clients in New York, to refer potential clients to attorneys

in New York, or to receive any share of a legal fee with a New York attorney.

59. A potential client viewing the Law Center website, upon searching for the name "Gorayeb" or "Gorayeb and Associates," would likely be confused and misled into believing that Gorayeb was Law Center, and/or was affiliated with Law Center, and/or was part of this illegal network, further damaging and tarnishing Gorayeb's reputation and standing in the legal profession.

60. The unauthorized sale by Google and Google permitting the misleading use by Law Center of the Gorayeb trademarks, derivatives thereof, and name allows Defendants to mislead potential clients and other consumers and to benefit financially and to free ride on the good will and professional reputation of Gorayeb without incurring the significant marketing and expenses or exerting the professional efforts which were required by Gorayeb for over thirty-years in building its business and professional reputation.

61. Defendants permitted the use of the trademarks of Gorayeb, derivations thereof, and/or name in at least the "Click to Call" Google advertising knowing that potential clients of Gorayeb are likely to be confused and diverted to lawyers other than Gorayeb. Since 2009; Google had the tools to prevent this unauthorized use, but, to the contrary, allowed this unauthorized use, and financially benefitted from such unauthorized use in the advertisements Google sold, to the detriment of Gorayeb, potential clients, other consumers and other similarly situated trademark owners. Google's actions and the use by Quintessa, Law Center, and/or McNeil also violates Google's own policies concerning the use of other's trademarks.

62. Upon information and belief, McNeil was, at all relevant times, the owner of Quintessa and Law Center and directed Quintessa and Law Center to conduct the acts alleged herein which give rise to the Claims asserted in this action. As such, she should be held individually liable for the alleged tortious conduct and conduct in violation of the statutes referred to in this Complaint.

63. The above allegations are merely examples of the problems and issues created by Defendants' unauthorized use of the Gorayeb trademarks, derivatives thereof, and name. It is possible, given the flexibility of the Internet, its continual evolution, and expansive growth particularly in advertising, that innumerable existing and other means exist by which Gorayeb and potential clients will be misled by Defendants in the future, further exacerbating Gorayeb's damages and further requiring Court intervention.

FIRST CLAIM

VIOLATION OF SECTION 43(A) OF THE LANHAM ACT,
15 U.S.C. §1125(A)

(Against All Defendants)

64. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

65. Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

66. Defendant Google's sale of commercial advertisements, including, but not limited to, "Click to Call" advertisements, which advertisements used in their text, with Google's permission but without Gorayeb's permission, Gorayeb's trademarks, derivatives thereof, and/or name, constitutes a use in commerce.

67. Defendants Quintessa's, Law Center's, and McNeil's use of Gorayeb's

trademarks, derivatives thereof, and/or names with Google's permission in the text of Google commercial advertisements, including, but not limited to, "Click to Call" advertisements purchased from Google, constitutes a use in commerce.

68. Defendants' use in commerce of Gorayeb's trademarks, derivatives thereof, and/or name in the text of Google commercial advertisements is likely to cause confusion, or to cause mistake, or to deceive consumers and potential clients as to the affiliation, connection, or association of Quintessa, Law Center, and/or McNeil, or as to the origin, sponsorship, or approval of Gorayeb's services or commercial activities.

69. Defendants' use in commerce of Gorayeb's trademarks, derivatives thereof, and/or name in the text of Google commercial advertisements misrepresents to consumers and potential clients the nature, characteristics, qualities, or geographic origin of Gorayeb's services and commercial activities.

70. Defendants' use in commerce of Gorayeb's trademarks, derivations confusingly similar thereto, and/or name in Defendants' commercial advertisements, including, but not limited to, "Click to Call" Google advertisements, constitutes false designation of origin, false or misleading description of fact, and false and misleading representation of fact which is likely to cause confusion, or to cause mistake, or to deceive consumers and potential clients as to the affiliation, connection, or association of Quintessa, Law Center, and/or McNeil, or as to the origin, sponsorship, or approval of Gorayeb's services or commercial activities.

71. Defendants' use in commerce of Gorayeb's trademarks, or derivations confusingly similar thereto, in the text of Defendants' commercial advertisements,

including, but not limited to, "Click to Call" Google advertisements, constitutes false designation of origin, false or misleading description of fact and false and misleading representation of fact which in commercial advertising misrepresents to consumers and potential clients the nature, characteristics, qualities, or geographic origin of Gorayeb's services and commercial activities.

72. Defendants' use of Gorayeb's trademarks, derivatives thereof, and name, and Defendants' false designation of origin and false representations are willful and reflect their intent to exploit the goodwill and professional reputation of Gorayeb either by direct diversion of clients or by a lessening of the goodwill and professional reputation associated with Gorayeb.

73. Defendants have damaged Gorayeb in an amount to be determined at trial.

74. Absent injunctive relief, Gorayeb will continue to be irreparably harmed by Defendants' actions.

75. Gorayeb has no adequate remedy at law for Defendants' false actions.

76. Gorayeb is entitled to the following damages:

   a. Temporary, preliminary, and/or permanent injunctive relief to restrain continuing infringements of the Gorayeb trademarks, derivatives thereof, and name and to counteract public confusion;

   b. Disgorgement of profits;

   c. Damages sustained by Gorayeb;

   d. Attorneys' fees, costs, and interest; and

   e. Whatever other damages the Court deems to be just and fair.

SECOND CLAIM

VIOLATION OF SECTION 32(1) OF THE LANHAM ACT, 15 U.S.C. §1114(1)

(Against All Defendants)

77. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

78. Defendants have violated Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

79. Gorayeb owns a valid registered trademark entitled to protection under the Lanham Act.

80. Without Gorayeb's consent, Defendants have used in commerce and applied the Gorayeb registered trademark, derivations confusingly similar thereto, reproductions, counterfeits, copies, or other colorable imitations thereof, in connection with the sale, offering for sale, distribution, or advertising of services in a number of ways including, but, not limited to:

(i) Google selling and accepting payment from advertisers, including, but not limited to, Quintessa, Law Center, and/or McNeil, for Google advertisements in which Google permitted such advertisers to use the Gorayeb registered trademark or derivations confusingly similar thereto in the text of Google advertisements, such as the "Click to Call" advertisements used by Quintessa, Law Center, and/or McNeil, which advertisements stated "Can Gorayeb Help You? Let us Fight on Your Behalf!";

(ii) Quintessa, Law Center, and/or McNeil purchasing Google advertisements in which Google permitted Quintessa, Law Center, and/or McNeil to use the Gorayeb registered trademark or derivations confusingly similar thereto in the text of the advertisements, including "Click to Call" Google advertisements, which advertisements stated "Can Gorayeb Help You? Let us Fight on Your Behalf!";

(iii) the unauthorized use by Quintessa, Law Center, and/or McNeil of "Click to Call" Google advertisements by which potential clients searching for "Gorayeb and Associates" are brought to a website run by Quintessa, Law Center, and/or McNeil and not connected or in any way affiliated with Gorayeb; and

(iv) the direction by McNeil of the use by Quintessa, Law Center, and/or McNeil of "Click to Call" Google advertisements by which potential clients searching for "Gorayeb and Associates" are brought to a website run by Quintessa, Law Center, and/or McNeil and not connected or affiliated in any way with Gorayeb.

81. Defendants' unauthorized and intentional use of Gorayeb's registered trademark in the text of Google advertisements infringes on Gorayeb's exclusive rights in its registered trademark and is likely to cause confusion, mistake, or deception among potential clients and other consumers.

82. In addition, given the generic nature of the Law Center website and the manner in which, upon information and belief, McNeil answered the Law Center telephone by simply saying that the caller had reached a law firm, potential clients and other consumers are likely to be confused even after accessing the websites or calling

Law Center into believing that the Law Center advertisements and the information they contain are associated with, sponsored by, or otherwise formally affiliated with or supported by Gorayeb, when that is not the case.

83. Defendants' infringement of the Gorayeb registered trademark is willful and done with knowledge that Law Center is not Gorayeb or in any way affiliated with Gorayeb and that Gorayeb is not affiliated with any network of lawyers affiliated with Law Center. Defendants' infringement reflects Defendants' intent to cause confusion, to cause mistake, or to deceive potential clients and consumers so as to exploit the goodwill and professional reputation associated with Gorayeb's registered trademark.

84. Defendants' infringement has damaged Gorayeb in an amount to be determined at trial.

85. Defendants' infringement has caused and, unless restrained by this Court, will continue to cause Gorayeb irreparable injury.

86. Gorayeb has no adequate remedy at law for Defendants' infringement.

87. Gorayeb is entitled to the following damages:

    a. Temporary, preliminary, and/or permanent injunctive relief to restrain continuing infringements of the Gorayeb trademark and to counteract public confusion;

    b. Disgorgement of profits;

    c. Treble damages;

    d. Attorneys' fees, costs and interest; and

    e. Whatever other damages the Court deems to be just and fair.

THIRD CLAIM

CONTRIBUTORY TRADEMARK INFRINGEMENT AND CONTRIBUTORY UNFAIR COMPETITION

(Against Google and McNeil)

88. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

89. With full knowledge of Gorayeb's rights in the Gorayeb trademarks, Google has knowingly sold to third-party advertisers, including Quintessa, Law Center, and/or McNeil, advertisements, including the "Click to Call" advertisements used by Quintessa, Law Center, and/or McNeil, using Gorayeb's trademarks. Quintessa's, Law Center's, McNeil's and/or other advertiser's use of the Gorayeb trademarks in commerce are likely to cause confusion among potential clients, and constitutes infringement of Gorayeb's rights in the Gorayeb trademarks.

90. Through Google's sale of advertisements using the Gorayeb trademarks and derivations confusingly similar thereto to third-party advertisers, such as Quintessa and Law Center, Google encourages and/or facilitates third-party advertisers' violations of the Lanham Act and unfair competition.

91. Google is therefore contributorily liable for the infringing use of the Gorayeb trademarks and for unfair competition by the third-party advertisers, including but not limited to the use by Quintessa, Law Center, and/or McNeil, which use the Gorayeb trademarks in Google advertising.

92. In addition, upon information and belief, McNeil is the sole owner of Quintessa and Law Center, which she alone controls.

93. Through the purchase from Google of advertisements using the Gorayeb

trademarks and derivations confusingly similar thereto, McNeil encourages and/or facilitates violations of the Lanham Act and unfair competition by Google, Quintessa, and Law Center.

94. Google's contributory infringement is willful and knowing, and reflects Google's intent to exploit the good will and professional reputation associated with the Gorayeb trademarks and name.

95. McNeil's contributory infringement is willful and knowing, and reflects McNeil's intent to exploit the good will and professional reputation associated with the Gorayeb trademarks and name.

96. Gorayeb has been damaged by Google's and McNeil's contributory infringement in an amount to be determined at trial.

97. Gorayeb has been, and absent injunctive relief will continue to be, irreparably harmed by Google's and McNeil's actions.

98. Gorayeb has no adequate remedy at law for the foregoing wrongful conduct.

99. Gorayeb is entitled to the following damages:

    a. Temporary, preliminary, and/or permanent injunctive relief to restrain continuing infringements of the Gorayeb trademarks and to counteract public confusion;

    b. Disgorgement of profits;

    c. Treble damages;

    d. Attorneys' fees, costs, and interest; and

    e. Whatever other damages the Court deems to be just and fair.

FOURTH CLAIM

VICARIOUS TRADEMARK INFRINGEMENT AND VICARIOUS UNFAIR COMPETITION

(Against McNeil)

100. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

101. McNeil, by virtue of her control of Quintessa and Law Center, has the ability to stop or limit the use of the Gorayeb trademarks or derivations confusingly similar thereto in the text of Defendants' advertisements, including "Click to Call" Google advertisements, but failed to do so.

102. Third-party advertisers' use of the Gorayeb trademarks or derivations confusingly similar thereto in the text of advertisements, such as the "Click to Call" Goolge advertisements, is likely to cause confusion among potential clients and consumers, and constitutes infringement of Gorayeb's trademark.

103. McNeil, who, upon information and belief, is the sole owner of Quintessa and Law Center, receives a direct financial benefit from the third-party advertisers' unauthorized use of Gorayeb's trademarks or derivations confusingly similar thereto, in the form of, upon information and belief, fees or monies paid to McNeil, Quintessa, and/or Law Center by lawyers or other third parties for the advertisements and/or in connection with clients obtained as a result of the advertisements.

104. McNeil is therefore vicariously liable for the infringing use of the Gorayeb trademarks by third-party advertisers, like, for example, Quintessa and Law Center, who use the Gorayeb trademarks and name.

105. McNeil's vicarious infringement is willful and knowing and reflects McNeil's intent to exploit the goodwill and professional reputation associated with the Gorayeb trademarks and name.

106. Gorayeb has been damaged by McNeil's vicarious infringement in an amount to be determined at trial.

107. Gorayeb has been and absent injunctive relief will continue to be, irreparably harmed by McNeil's actions.

108. Gorayeb has no adequate remedy at law for the foregoing wrongful conduct.

109. Gorayeb is entitled to the following damages:

a. Temporary, preliminary, and/or permanent injunctive relief to restrain continuing infringements of the Gorayeb trademarks and to counteract public confusion;

b. Disgorgement of profits;

c. Treble damages;

d. Attorneys' fees, costs, and interest; and

e. Whatever other damages the Court deems to be just and fair.

FIFTH CLAIM

VIOLATION OF SECTION 43(C) OF THE LANHAM ACT, 15 U.S.C. §1125(C)

(Against All Defendants)

110. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

111. Defendants' use of the Gorayeb trademarks constitutes dilution in

violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

112. The Gorayeb trademarks are famous and distinctive marks within the meaning of 15 U.S.C. §1125 for, *inter alia,* the following reasons:

a. Gorayeb has continually existed since 1986;

b. The name Gorayeb & Associates has been used continually since at least January 1, 1999;

c. Since 2015, Gorayeb has had federal trademark registration;

d. Since 1986, Gorayeb has obtained over $1 billion in recoveries for its clients;

e. Gorayeb has and continues to expend substantial amounts in its marketing efforts nationally and internationally in many forms of media, including, but not limited to, the Internet, television, radio, and print;

f. Gorayeb has sponsored numerous public international, national, and local events, including The World Cup; and

g. Gorayeb has obtained a high level of recognition among potential clients.

113. Defendants' use of the Gorayeb trademarks or derivations confusingly similar thereto as alleged in this Complaint is likely to cause the tarnishing of Gorayeb trademarks.

114. For example, the "Click to Call" Google advertisement includes promotional material, which states "Can Gorayeb Help You? Let Us Fight on Your Behalf!" The same advertisement also includes a reference to www.accidentinjurylawcenter.com. The www.accidentinjurylawcenter.com website refers to a national network of lawyers to which Law Center would refer a

potential client. Gorayeb has never been part of this network. Such a network by which Law Center, which is not a law firm, upon information and belief refers clients it has solicited to law firms for a fee is possibly a violation of the New York Judiciary Law. Accordingly, associating Gorayeb with this network, as the "Click to Call" Google advertisement implies, would falsely associate Gorayeb with this possibly illegal network, which would tarnish Gorayeb's trademarks and professional reputation.

115. Defendants' conduct will also likely cause dilution by blurring. By using "Click to Call" Google advertisements, which state "Can Gorayeb Help You? Let Us Fight on Your Behalf!" in response to a search for "Gorayeb and Associates" and which also include a reference to www.accidentinjuryawcenter.com, potential clients of Gorayeb and other consumers will likely identify Gorayeb's famous trademarks not only with Gorayeb but also with Law Center. This false association will dilute the ability of the Gorayeb trademarks to clearly identify and distinguish it as the one source of legal services of the type and quality offered by Gorayeb since 1986. In addition, it will whittle away at the selling power of the Gorayeb trademarks and impair their distinctiveness.

116. Upon information and belief, Defendants, if not enjoined, have derived and will derive substantial revenue and profit from the past and continuing dilution of the Gorayeb's trademarks as a result of the unauthorized uses of the Gorayeb trademark.

117. Defendants' dilution of the Gorayeb trademarks has caused Gorayeb damages in an amount to be determined at trial.

118. Gorayeb has been, and absent injunctive relief will continue to be, irreparably harmed by Defendants' conduct.

119. Gorayeb has no adequate remedy at law for Defendants' dilution of the Gorayeb trademarks.

120. Gorayeb is entitled to the following damages:

a. Temporary, preliminary, and/or permanent injunctive relief to restrain continuing infringements of the Gorayeb trademarks and to counteract public confusion;

b. Disgorgement of profits;

c. Treble damages;

d. Attorneys' fees, costs, and interest;

e. Whatever other damages the Court deems to be just and fair.

SIXTH CLAIM

COMMON LAW TRADEMARK INFRINGEMENT

(Against All Defendants)

121. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

122. Defendants' unauthorized and intentional use in commerce of the Gorayeb trademarks in connection with its advertising constitutes common law trademark infringement.

123. Defendants' unauthorized and intentional use of the Gorayeb trademarks in the text of advertisements infringes on Gorayeb's exclusive rights in its trademarks and is likely to cause confusion, mistake or deception among potential

clients and other consumers.

124. Defendants' infringement of the Gorayeb trademarks is willful and knowing and reflects Defendants' intent to exploit the goodwill and professional reputation associated with Gorayeb's trademarks.

125. Defendants' infringement has damaged Gorayeb in an amount to be determined at trial, including compensatory and punitive damages, and interest.

126. Defendants' infringement has caused and, unless restrained by this Court, will continue to cause Gorayeb irreparable injury.

127. Gorayeb has no adequate remedy at law for Defendants' infringement.

SEVENTH CLAIM

COMMON LAW UNFAIR COMPETITION

(Against All Defendants)

128. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

129. Upon information and belief, when Quintessa, Law Center, and McNeil purchased from Google the advertisements that used the Gorayeb trademarks, Defendants, including Google, knew that no Defendants had the authority to use the Gorayeb trademarks and that no Defendants were the owners of the Gorayeb trademarks.

130. By so doing, *inter alia*, Google, Quintessa, Law Center, and McNeil acted in bad faith to misappropriate the labors and expenditures of Gorayeb, which are substantial and have been ongoing since 1986, and to exploit the goodwill and professional reputation associated with the Gorayeb trademarks.

131. Defendant Google further acted in bad faith to misappropriate the labors and expenditures of Gorayeb, which are substantial and have been ongoing since 1986, and to exploit the goodwill and professional reputation associated with Gorayeb's trademarks when Google, *inter alia*, disregarded its own policies and detection tools, and, without authorization from Gorayeb and to profit from the use of the Gorayeb trademarks, sold advertisements to, among others, Quintessa, Law Center, and/or McNeil that used the Gorayeb trademarks in the text of the Google advertisements.

132. Defendants Quintessa, Law Center, and/or McNeil further acted in bad faith, as, when the "646" telephone number falsely associated in the Google advertisement was called, upon information and belief, McNeil misrepresented to the caller that the telephone number was that of a law firm, when it was not, and did not inform the caller that the telephone number was not the telephone number of Gorayeb in New York but of her company(ies) in Oklahoma.

133. Defendants' actions constitute common law unfair competition and have damaged Gorayeb in an amount to be determined at trial, including compensatory and punitive damages, and interest.

134. Defendants' actions have caused and, unless restrained by this Court, will continue to cause Gorayeb irreparable injury.

135. Gorayeb has no adequate remedy at law for Quintessa's and Law Center's actions.

EIGHTH CLAIM

VIOLATION OF NEW YORK GENERAL BUSINESS LAW SECTION 349

(Against All Defendants)

136. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

137. Defendants' conduct constitutes deceptive trade practices in the conduct of business, trade, or commerce in violation of New York General Business Law §349.

138. Defendants' actions, as alleged herein, are consumer oriented, and, if permitted to proceed, will harm the public interest at large in New York by, among other things, deceiving potential clients concerning their counsel, interfering with clients' choice of counsel, and possibly permitting solicitation of clients in violation of the New York Judiciary Law and New York public policy.

139. Defendants' actions, as alleged herein, are materially misleading.

140. Defendants' actions have damaged Gorayeb in an amount to be determined at trial pursuant to the New York General Business Law, including, but not limited to, injunctive relief, compensatory damages, punitive damages, treble damages, interest, and attorneys' fees and costs of this action.

NINTH CLAIM

VIOLATION OF NEW YORK GENERAL BUSINESS LAW SECTION 350

(Against All Defendants)

141. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

142. Defendants' conduct constitutes false advertising in the conduct of any business, trade or commerce in violation of New York General Business Law §350.

143. Defendants' actions, as alleged herein, are consumer oriented, and, if permitted to proceed, will harm the public interest at large in New York by, among other things, deceiving potential clients concerning their counsel, interfering with clients' choice of counsel, and possibly permitting solicitation of clients in violation of the New York Judiciary Law and New York public policy.

144. Defendants' actions, as alleged herein, are materially misleading.

145. Defendants' actions have damaged Gorayeb in an amount to be determined at trial pursuant to the New York General Business Law, including, but not limited to, injunctive relief, compensatory damages, punitive damages, treble damages, interest, and attorneys' fees and costs of this action.

TENTH CLAIM

VIOLATION OF NEW YORK GENERAL BUSINESS LAW SECTION 133

(Against All Defendants)

146. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

147. As alleged herein, Defendants' conduct was intended to deceive or mislead the public, including potential clients of Gorayeb, by the unauthorized use of the Gorayeb trademarks and name for advertising purposes.

148. Such conduct will likely deceive or mislead the public as to the identity of Law Center and, unless restrained by this Court, may lead potential clients to

conclude that Law Center is Gorayeb or is affiliated with or the owner of the Gorayeb trademarks or name when it is not.

149. Defendants' actions have caused, and, unless restrained by this Court, will continue to cause Gorayeb irreparable injury.

150. Gorayeb has no adequate remedy at law for the actions of Quintessa, Law Center, and/or McNeil.

151. Gorayeb is entitled to the remedy pursuant to the New York General Business Law, including, but not limited to, an injunction enjoining the unauthorized use of its trademarks and name as alleged in this Complaint.

ELEVENTH CLAIM

VIOLATION OF SECTION 360-L OF THE NEW YORK GENERAL BUSINESS LAW FOR TRADEMARK DILUTION AND UNFAIR COMPETITION

(Against All Defendants)

152. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

153. As alleged herein, Gorayeb possesses a strong mark, which has a distinctive quality.

154. As alleged herein, if not enjoined, Defendants' actions are likely to result in the blurring and/or tarnishment of the Gorayeb trademarks and name.

155. As alleged herein, Defendants' actions will injure the business reputation or cause dilution to the distinctive quality of the Gorayeb trademarks and name and constitute both infringement of the Gorayeb trademarks and name and unfair competition.

156. Gorayeb's damages are irreparable and Gorayeb has no remedy at law.

157. Pursuant to New York General Business Law §360-l, Gorayeb is entitled to an injunction enjoining the unauthorized sale and purchase of its trademarks and name by Defendants.

TWELFTH CLAIM

FOR INJUNCTIVE RELIEF

(Against Quintessa, Law Center, and McNeil)

158. Gorayeb repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

159. The actions of Quintessa, Law Center and McNeil are violative of New York state law, which prohibits, among other things, the solicitation of business on behalf of an attorney (New York Judiciary Law §479) and which prohibits a corporation or voluntary association from furnishing attorneys or counsel, and from advertising, either alone or with others, for the furnishing of legal advice, services, or counsel (New York Judiciary Law §495).

160. The public interest has been harmed by the actions of Quintessa, Law Center, and McNeil because potential clients and other consumers are being deceived and because of the continual violation of law, including, but not limited to, the New York Judiciary Law.

161. This Court has broad discretion to enjoin possible future violations of law where past violations have been shown.

162. Equity, public interest, and this Court's broad discretion require that Quintessa, Law Center, and McNeil be enjoined from possible future violations of

New York law, including, but not limited to, violations of New York Judiciary Law §§479 and 495, and from misleading and harming clients and other consumers throughout this state.

163. Accordingly, injunctive relief is demanded prohibiting Quintessa's, Law Center's, and/or McNeil's continuing violation of the law.

WHEREFORE, Gorayeb & Associates, P.C. respectfully requests judgment in its favor and against the Defendants as follows:

On each of Plaintiff's **FIRST CLAIM, SECOND CLAIM, THIRD CLAIM, FOURTH CLAIM, AND FIFTH CLAIM**:

a. Temporarily, preliminarily, and permanently enjoining McNeil and the other Defendants, their officers, members, shareholders, directors, partners, agents, contractors, subcontractors, servants, employees, representatives, franchisees, licensees, subsidiaries, parents, and related companies or entities, and all others acting in concert or participation with them, including, but not limited to, any attorneys or networks of attorneys, from:

  1. directly or indirectly selling and offering for sale, and directly or indirectly purchasing and offering to purchase, advertisements in which the Gorayeb trademarks, other derivations confusingly similar to, and/or name are used in the text of the advertisement, to anyone other than Gorayeb;
  2. infringing, or causing any other entity to infringe, the

Gorayeb trademarks;

3. unfairly competing with Gorayeb in any manner whatsoever; and
4. making any use of the Gorayeb trademarks and/or other derivations confusingly similar thereto and/or name;
5. Directing Defendants to post on their respective websites corrective advertising to counteract public confusion in a manner and form to be established by the Court;
6. Directing Defendants to file with this Court and serve on Gorayeb within thirty (30) days after the service of the injunction, a report in writing, under oath, that describes in detail the manner and form in which Defendants have complied with the orders of this Court;

b. Disgorgement of profits;

c. Treble damages;

d. Attorneys' fees, costs, and interest;

e. Directing Defendants to account to Gorayeb for any gains, profits, and advantages obtained by Defendants as a result of their wrongful actions;

f. Awarding restitution to Gorayeb of all gains, profits, and advantages obtained by Defendants as a result of their wrongful actions;

g. Awarding Gorayeb an amount sufficient to conduct a corrective advertising campaign to counteract public confusion as a result of Defendants' wrongful conduct and misleading advertising;

On Plaintiff's **SIXTH CLAM**:

a. Ordering injunctive relief as set forth above concerning the **FIRST through FIFTH CLAIMS**, and awarding compensatory and punitive damages, and interest.

On Plaintiff's **SEVENTH CLAIM**:

a. Ordering injunctive relief as set forth above concerning the **FIRST through FIFTH CLAIMS**, and awarding compensatory and punitive damages, and interest.

On Plaintiff's **EIGHTH CLAIM**:

a. Ordering injunctive relief as set forth above concerning the **FIRST through FIFTH CLAIMS**, as well as compensatory damages, punitive damages, treble damages, interest, and Gorayeb's attorneys' fees and costs incurred in this action.

On Plaintiff's **NINTH CLAIM**

a. Ordering injunctive relief as set forth above concerning the **FIRST through FIFTH CLAIMS**, as well as compensatory damages, punitive damages, treble damages, interest, and Gorayeb's attorneys' fees and costs incurred in this action.

On Plaintiff's **TENTH CLAIM**

a. Ordering injunctive relief as set forth above concerning the **FIRST through FIFTH CLAIMS**.

On Plaintiff's **ELEVENTH CLAIM**

a. Ordering injunctive relief as set forth above concerning the **FIRST through FIFTH CLAIMS**.

On Plaintiff's **TWELFTH CLAIM**

a. Ordering injunctive relief prohibiting Quintessa's, Law Center's, and/or McNeil's continuing violation of the law, including, but not limited to, violations of New York Judiciary Law §§479 and 495, and from misleading and harming clients and other consumers throughout this state.

On all of Plaintiff's **CLAIMS** whatever other and further relief as this Court deems just and fair, including interest.

Dated: May 19, 2017

Respectfully submitted,

Ciampi LLC

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